

*Investment - Mr. Gail*



**The Comptroller General  
of the United States**

**Washington, D.C. 20548**

## **Decision**

**Matter of:** Concorde Battery Corporation

**File:** B-235119

**Date:** June 30, 1989

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### **DIGEST**

1. Correction of a bid which results in the displacement of a lower bid is permissible where it is clear from the face of the bid that the bidder mistakenly totaled its price for the first three items in the blank for the fourth item and where bidder's intention not to charge for the fourth item is ascertainable from the solicitation itself.
2. Bidder's failure under a small business set-aside to certify that it is a small business does not require rejection of its bid as nonresponsive since information regarding a bidder's size is not required to determine whether a bid meets the solicitation's material requirements.
3. Bidder's failure under a small business set-aside to certify that all end items to be furnished will be manufactured or produced by a small business does not require rejection of its bid as nonresponsive where bidder is obligated by operation of another solicitation clause to furnish only small business end items in its performance of the contract.

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### **DECISION**

Concorde Battery Corporation protests the proposed award by the United States Army Troop Support Command of a contract to F. Floyd Smith & Associates under invitation for bids (IFB) No. DAAK01-88-B-0208, a total small business set-aside for the purchase of storage batteries. Concorde argues that the Army improperly permitted Smith to correct a mistake in its bid, thereby displacing the protester as the low bidder. Concorde also argues that Smith's bid should have been rejected as nonresponsive because Smith failed to certify in the solicitation's Small Business Concern Representation

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clause that it was a small business and that all end items to be furnished under the contract would be manufactured or produced by a small business concern. We deny the protest.

The IFB contemplated the award of a firm, fixed-price requirements contract for an estimated total of 6,943 batteries to be delivered over a 3-year period. Under item No. 0001AA, bidders were to submit a unit price for an estimated 2,143 batteries to be ordered during the first contract year; under item No. 0002AA, they were to submit a unit price for an estimated 2,300 batteries to be ordered during the second contract year; and under item No. 0003AA, bidders were asked for a unit price for an optional quantity of 2,500 batteries to be delivered during a third year. Item No. 0004 required the submission of a total price for the data items listed on the Contract Data Requirements List, which was attached to the solicitation. The IFB advised that bids would be evaluated for award purposes by adding together the prices for the four items.

Concorde's bid of \$280,334.56 was the lowest of the seven received at the October 28, 1988, bid opening; Smith's bid of \$534,352.98 was second low. On November 8, Smith requested that the agency permit it to correct its bid price to \$267,176.49. Smith explained that it had mistakenly entered its total price for item Nos. 0001AA-0003AA in the blank opposite item No. 0004. Smith further noted that it had intended to bid "No Charge" for the data items. The agency permitted Smith to make the correction, thereby displacing Concorde as the low bidder.

Concorde argues that Smith should not have been permitted to correct its bid since the bid itself did not contain clear and convincing evidence of Smith's intended price for the data items, as required by Federal Acquisition Regulation (FAR) § 14.406-3(a).

The regulation permits the correction of a bid which would result in the displacement of one or more lower bids only where both the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. The protester principally contends that it was not clear from the face of Smith's bid that Smith had in fact intended to bid "No Charge" for the data items. Concorde also questions whether Smith's bid is responsive because, as corrected, it did not include a price for the data items.

The agency's determination to permit the correction of Smith's bid notes that the price Smith inserted in item No. 0004 did indeed reflect the total of its prices for

item Nos. 0001AA-0003AA and points out that of the seven bids received, five others contained the same error. Further, the agency states that Concorde, the only bidder not using item No. 0004 for its total price for the batteries, inserted "No Charge" for the data items. The agency also says that the data item to be supplied--a material safety data sheet--was a minor matter involving inconsequential expense.

In regard to the lack of price for the data item, the agency argues that Smith's intent to bid "No Charge" was ascertainable from the face of its bid. Specifically, the agency points to subparagraph L-12.b of the IFB, which provides that:

"If an offeror fails to price or to enter a specific response to any data item requested to be furnished, it will be considered that the data is being furnished as part of the contract consideration at no additional cost to the Government."

We think that the agency's determination to permit correction here was reasonable. Clearly, the fact that the price inserted for item No. 0004 is the total of the other three line items and that the data requirement involves only minimal cost indicates that the item No. 0004 entry was not Smith's intended bid for that item, but rather was simply the total of the first three line items. Correcting the bid to delete the inserted amount for item No. 0004 takes care of the obvious error that was made. That, of course, leaves item No. 0004 without any price at all. On this record, however, given that (1) item No. 0004 is reported to involve nominal cost, (2) the solicitation recognized the possibility that a price might not be provided for a data item but obligated the builder to furnish the data anyway, and (3) Smith totaled its bid prices without including any amount that could represent an intended price for item No. 0004, we think it is also obvious that Smith did not intend to charge for the item. We therefore have no basis upon which to object to the correction of Smith's bid.

Since, as indicated above, pursuant to subparagraph L-12.b of the IFB Smith was bound to furnish the data items for which it did not submit a price, Smith's bid is responsive. See Delta International Machinery Corp., B-229800, Mar. 3, 1988, 88-1 CPD ¶ 228.

Concorde argues secondly that Smith's bid should have been rejected as nonresponsive since Smith failed to certify in the solicitation's Small Business Concern Representation clause that it was a small business and that all end items

to be furnished under the contract would be manufactured or produced by a small business.

The solicitation contained the standard Small Business Concern Representation clause, set forth at FAR § 52.219-1, in which a bidder certifies that it is, or is not, a small business concern and that all, or not all, end items to be furnished will be manufactured or produced by a small business concern. Smith failed to complete either portion of the representation. The IFB also incorporated by reference FAR § 52.219-6, "Notice of Total Small Business Set-Aside," which provides in part that:

"A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia."

With regard to Smith's failure to complete the small business size status portion of the representation, a bidder's failure to certify under a small business set-aside that it is a small business does not affect the bid's responsiveness because information as to the bidder's size is not required to determine whether a bid meets the IFB's material requirements. Insinger Machine Co., B-234622, Mar. 15, 1989, 89-1 CPD ¶ 277. In contrast, we have generally held that a bidder's failure to complete the end item certification does require rejection of its bid as nonresponsive, since to be responsive, a bid on a total small business set-aside must establish a bidder's obligation to furnish only end items manufactured or produced by a small business. J-MAR Metal Fabricating Co., B-217224, Mar. 21, 1985, 85-1 CPD ¶ 329.

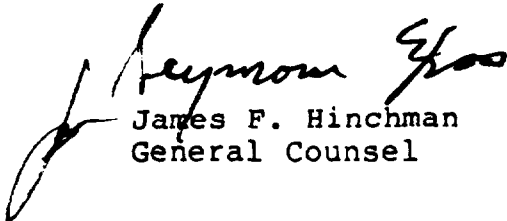
We do not think that a bidder's failure to certify that it will furnish only end items manufactured or produced by a small business concern requires rejection of its bid as nonresponsive, however, where, despite its failure to complete the certification, the bidder would still be obligated to furnish only small business end items. Here, the IFB incorporated FAR § 52.219-6, which provides that the bidder "agrees to furnish" only small business end items in its performance of the contract. Since Smith submitted a bid which did not take exception to any of the solicitation terms, including those contained in FAR § 52.219-6, that firm would be obligated to provide batteries manufactured or

produced by small businesses. See Ibex Ltd., B-230218, Mar. 11, 1988, 88-1 CPD ¶ 257. It is therefore our view that the agency properly declined to reject Smith's bid as nonresponsive.<sup>1/</sup>

Finally, the protester asks that we require the agency to substantiate that the end items that Smith intends to furnish under the contract are in fact manufactured by a small business. Concorde contends that the fact that Smith is legally obligated to furnish only small business end items is of little value if the agency does not take steps to assure that the bidder will satisfy its obligation.

Whether a firm actually complies with its obligation to furnish a small business end item is a matter of contract administration, which is the primary responsibility of the contracting agency and not for consideration by our Office. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1) (1988); Food Tech Industries Co., Inc., B-232791, Oct. 25, 1988, 88-2 CPD ¶ 392. We therefore decline to take the action that the protester requests.

The protest is denied.



James F. Hinchman  
General Counsel

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<sup>1/</sup> This case is distinguishable from Delta Concepts, Inc., 67 Comp. Gen. 522 (1988), 88-2 CPD ¶ 43, in which we held that the Place of Performance clause could not be used to cure a bidder's failure to certify that all end items would be manufactured or produced by a small business. In Delta Concepts, we reasoned that a bidder could not be said to have assumed an obligation to furnish a product manufactured by a small business merely by virtue of listing a small business concern in the Place of Performance clause. Our decision pointed out that the clause is for informational purposes and as such relates to responsibility rather than responsiveness. Here, in contrast, Smith is expressly obligated by the solicitation's incorporation of FAR § 52.219-6, to which it did not take exception, to furnish only small business-manufactured end items.